



US Army Corps
of Engineers
Portland District

Public Notice

Oregon Statewide Programmatic General Permit

45-Day Notice

Issue Date: September 12, 2003
Expiration Date: October 27, 2003
Corps of Engineers Action ID: 2001-00283

Under the authority of Section 404 of the Clean Water Act, and Section 10 of the River and Harbor Act of 1899, U.S. Army Corps of Engineers, Portland District (Corps), proposes to issue a Statewide Programmatic General Permit for work in waters of the United States within the state of Oregon. A draft of the proposed general permit and standard operating procedures are included with this public notice for review and comment.

Also proposed is the suspension of certain existing nationwide permits which would be superseded by this proposed programmatic general permit.

WHY IS A STATEWIDE PROGRAMMATIC GENERAL PERMIT BEING PROPOSED?

A statewide programmatic general permit (SPGP) is a type of general permit, issued by the Corps, that authorizes certain activities that are also regulated by another level of government. This SPGP is based on the existing regulatory program administered by Oregon Division of State Lands (DSL) under the authority of the state Removal-Fill Law (ORS 196.800 et seq.). The proposed SPGP is intended to reduce duplicative regulatory processes, simplify the application process for applicants, and make better use of limited government resources. These goals would be achieved by the Corps deferring to DSL for the review and evaluation of permit applications for proposed activities which meet the criteria for authorization under the SPGP, while providing opportunities for both agencies to enhance the protection of aquatic resources by increasing their efforts to ensure compliance with permit requirements through on-site inspections.

An initial public notice, proposing authorization of eleven categories of activities under the SPGP, was issued on May 25, 2001. Two categories have been eliminated from consideration because of the potential for greater than minimal individual and cumulative impacts: recreational and small-scale placer mining, and gravel removal (bar scalping). Two categories (fish enhancement and wetland restoration and enhancement) have been combined into the present stream and wetland restoration category. The present category for minor fills and removals incorporates the original categories proposing the authorization of work at boat ramps and the maintenance of drainage channels upstream of tidegates. One new category of work has been added: piling installation and/or removal.

WORK AUTHORIZED BY THIS PERMIT

The following types of activities, which are also regulated by DSL under the authority of the State Removal-Fill Law, are proposed for authorization by the SPGP subject to the limitations on area and quantities stated below:

1. streambank protection (such as bioengineering, rock and wood flow deflectors, individual rock boulders);
2. road construction, repairs and improvements;
3. site preparation for construction of buildings and related features;
4. stream and wetland restoration;
5. minor fills and removals;
6. water control structures (repair of existing structures and improvements as necessary to provided or improve fish passage);
7. utility lines; and
8. piling installation and/or removal.

Conditions of eligibility are stated in the proposed SPGP which is attached to this public notice. Proposed projects which are not eligible for SPGP authorization would require authorization from the Corps by standard permit, letter of permission, regional general permit or nationwide permit.

LIMITATIONS ON AREA AND QUANTITY

The activities listed above would be authorized by the proposed SPGP subject to the following limitations for individual projects:

- a) filling in wetlands shall not exceed one-half (1/2) acre; and
- b) filling and/or excavation in waters other than wetlands shall not exceed 1,000 cubic yards below the ordinary high water line.

The thresholds listed in a) and b) above do not apply to wetland restoration and enhancement, but all other conditions and limitations specified in the draft permit would apply to this activity.

OPERATING PROCEDURES

Under the SPGP, applications for Corps permits will be submitted by the applicant to Oregon Division of State Lands, who will screen them for SPGP eligibility and will process those applications which are eligible. Applications which are found to be ineligible will be forwarded to the Corps for action.

All applications for projects determined to be eligible for authorization by this SPGP will be reviewed and evaluated by DSL following the policies and procedures for issuing permits under the Removal Fill Law as stated in Oregon Administrative Rules (OAR 141-085-0005 to 141-085-0660). Authorization of a proposed action by this SPGP will occur when DSL issues either an individual permit or verification of authorization under a GA, provided that compliance with other federal statutes has been accomplished as detailed in the SPGP.

The proposed operating procedures for the SPGP are detailed in Standard Operating Procedures attached to this public notice.

SUSPENSION OF CERTAIN NATIONWIDE PERMITS

The proposed SPGP would authorize certain types of projects, which are currently authorized by existing nationwide permits. To avoid duplication and confusion, Portland District proposes to suspend certain nationwide permits as indicated below, except for activities proposed on tribal lands. All other existing nationwide or Portland District regional general permits would remain in effect until they expire, or are otherwise modified, suspended or revoked. Those nationwide permits remaining in effect authorize types of activities which are not included in the SPGP because they are: 1) specifically excluded by the terms of the SPGP, or 2) are types of activities which do not require authorization under the state Removal-Fill Law but which require authorization by the Corps under Section 10 of the River and Harbor Act. Following is a list of those nationwide permits which would be suspended and those remaining in effect.

The following nationwide permits would be suspended:

- 3 Maintenance
- 6 Survey Activities
- 12 Utility Line Activities
- 13 Bank Stabilization
- 14 Linear Transportation Projects
- 15 USCG Approved Bridges
- 18 Minor Discharges
- 24 State Administered 404 Program
- 25 Structural Discharges
- 27 Stream and Wetland Restoration
- 29 Single-family Housing
- 33 Temporary Construction Access and Dewatering
- 39 Residential, Commercial, and Institutional Developments

The following nationwide permits would remain in effect:

- 1 Aids to Navigation
- 2 Structures in Artificial Canals
- 4 Fish and Wildlife Harvesting, Enhancement & Attraction Devices and Activities
- 5 Scientific Measurement Devices
- 7 Outfall Structures
- 8 Oil and Gas Structures
- 9 Structures in Anchorage Areas
- 10 Mooring Buoys
- 11 Temporary Recreational Structures
- 16 Return Water from Upland Disposal
- 17 Hydropower Projects
- 19 Minor Dredging
- 20 Oil Spill Cleanup
- 21. Surface Coal Mining Activities
- 22 Removal of Vessels
- 23 Approved Categorical Exclusions
- 28 Modification of Existing Marinas
- 30 Moist Soil Management
- 31 Maintenance of Existing Flood-control Projects
- 32 Completed Enforcement Actions
- 34 Cranberry Production Activities
- 35 Maintenance Dredging of Existing Basins
- 36 Boat Ramps
- 37 Emergency Watershed Protection and Rehabilitation
- 38 Cleanup of Hazardous and Toxic Waste
- 40 Agricultural Activities
- 41. Reshaping of Existing Drainage Ditches
- 42. Recreational Facilities
- 43. Stormwater Management Facilities

WATER QUALITY CERTIFICATION

Portland District is requesting certification of this SPGP under Section 401 of the Clean Water Act. The Oregon Department of Environmental Quality public notice advertising the request for certification is attached.

COASTAL ZONE MANAGEMENT ACT CERTIFICATION

Oregon Department of Land Conservation and Development has been requested to concur that the activities to be authorized by this SPGP which may affect land or water uses in the Coastal Zone will be in compliance with the State Coastal Zone Management Program, as required by Section 307(c) of the Coastal Zone Management Act of 1972, as amended by 16 USC 1456(c)(3). Attached to this Public Notice is a notice of application for Certification of Consistency with the State's Coastal Zone Management Program.

ENDANGERED SPECIES

Consultation under Section 7 of the Endangered Species Act (ESA) for the proposed SPGP has been initiated with U.S. Fish and Wildlife Service (USFWS) and National Marine Fisheries Service (NMFS). Consultation as required by the Magnuson-Stevens Act for essential fish habitat has also been initiated with NMFS.

CULTURAL RESOURCES

Proposals for activities to be authorized by this SPGP will be reviewed individually to determine whether those activities may be located on property registered or eligible for registration in the latest published version of the National Register of Historic Places. A copy of each notice for projects proposed to be authorized by this SPGP will be provided to the State Historic Preservation Office (SHPO) by DSL. Copies of the notice will also be sent to Indian Tribes who have an interest in the area in which the proposed action would occur. If information is received from the SHPO, tribes or other interested parties which indicates that the site of the proposed action may affect human burials, cultural resources or historic properties (as identified by the Federal historic preservation laws), the Corps will be notified by DSL and will take actions needed to comply with Federal cultural resources and historic preservation laws and regulations.

WILD AND SCENIC RIVERS

Projects located within a reach of a river designated as a Federal Wild and Scenic River will not be eligible for authorization under the SPGP.

EVALUATION

The decision whether to issue this SPGP will be based on an evaluation of the probable impacts including cumulative impacts of the described activities on the public interest. That decision will reflect the national concern for both protection and utilization of important resources. The benefit which reasonably may be expected to accrue from the described activities must be balanced against their reasonably foreseeable detriments. All factors, which may be relevant to the described activities will be considered including the cumulative effects thereof; among those are conservation, economics, aesthetics, general environmental concerns, wetlands, historic properties, fish and wildlife values, flood hazards, floodplain values, land use, navigation, shoreline erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food and fiber production, mineral needs, consideration of property ownership and, in general, the needs and welfare of the people.

The Corps of Engineers is soliciting comments from the public; Federal, state, and local agencies and officials; Indian Tribes; and other interested parties in order to consider and evaluate the impacts of the activities proposed to be authorized by this SPGP. Any comments received will be considered by the Corps of Engineers in its decision on this SPGP. Comments will be considered in the preparation of an Environmental Assessment pursuant to the National Environmental Policy Act. Comments will also be used to determine the need for a public hearing and to determine the overall public interest of the proposed activities.

PUBLIC HEARING

Any person may request, in writing, within the comment period specified in this notice, that a public hearing be held to consider this proposal. Requests for a public hearing shall specifically state the reasons for holding the hearing. The Corps holds public hearings for the purpose of obtaining public comments, when that is the best means for understanding a wide variety of concerns from a diverse segment of the public.

SCHEDULE

A decision on the issuance of this SPGP is anticipated within six months of the closing date of this public notice.

ADDITIONAL INFORMATION

For additional information about this proposal, contact:

Judy Linton

U.S. Army Corps of Engineers, Portland District
Phone: 503-808-4382
email: judy.l.linton@usace.army.mil

Eric Metz

Oregon Division of State Lands
Phone: 503-378-3805, ext. 266
email: eric.metz@dsl.state.or.us

This public notice may also be viewed on the Portland District website at
<http://www.nwp.usace.army.mil/op/g/>

COMMENTS

Comments on the proposed SPGP should reference the U.S. Army Corps of Engineers number shown above and should reach this office no later than the above expiration date of this Public Notice to become part of the record and to be considered in the decision. Comments should be mailed to the following address:

U.S. Army Corps of Engineers, Portland District
ATTN: CENWP-OP-G (Judy Linton)
P.O. Box 2946
Portland, Oregon 97208-2946

Comments may also be sent by email to: judy.l.linton@usace.army.mil.

PUBLIC NOTICE
Oregon Department of Environmental Quality
Water Quality 401 Certification

Corps of Engineers Action ID Number: 200100283

Notice Issued: September 12, 2003
Written Comments Due: October 27, 2003

LOCATION OF CERTIFICATION ACTIVITY: Waters of the United States within the state of Oregon.

WHAT IS PROPOSED: Oregon Statewide Programmatic General Permit

NEED FOR CERTIFICATION: Section 401 of the Federal Clean Water Act requires applicants for Federal permits or licenses to provide the Federal agency a water quality certification from the State of Oregon if the proposed activity may result in a discharge to surface waters.

DESCRIPTION OF DISCHARGES: See attached U.S. Army Corps of Engineers public notice on the proposed project

WHERE TO FIND DOCUMENTS: Documents and related material are available for examination and copying at Oregon Department of Environmental Quality, Water Quality Division, 811 S.W. 6th Avenue, Portland, Oregon 97204. While not required, scheduling an appointment will ensure documents are readily accessible during your visit. To schedule an appointment please call Alice Kavajecz at (503) 229-6962. Any questions on the proposed certification may be addressed to the 401 Program Coordinator at (503) 229-5845.

PUBLIC PARTICIPATION:

Public Hearing: Oregon Administrative Rule (OAR) 340-48-0020 (6) states that "The Director shall provide an opportunity for the applicant, any affected state, or any interested agency, person, or group of persons to request or petition for a public hearing with respect to certification applications. If the Director determines that new information may be produced thereby, a public hearing will be held prior to the Director's final determination. Instances of doubt shall be resolved in favor of holding the hearing. There shall be public notice of such a hearing."

Written comments:

Written comments on the proposed certification must be received at the Oregon Department of Environmental Quality by 5 p.m. on (full date). Written comments should be mailed to Oregon Department of Environmental Quality, Attn: 401 Program Coordinator, 811 S.W. 6th Avenue, Portland, Oregon 97204.

People wishing to send written comments via e-mail should be aware that if there is a delay between servers or if a server is not functioning properly, e-mails may not be received prior to the close of the public comment period. People wishing to send comments via e-mail should send them in Microsoft Word (through version 7.0), WordPerfect (through version 6.x) or plain text format to melville.tom@deq.state.or.us. Otherwise, due to conversion difficulties, DEQ recommends that comments be sent in hard copy.

WHAT HAPPENS NEXT: DEQ will review and consider all comments received during the public comment period. Following this review, the permit may be issued as proposed, modified, or denied. You will be notified of DEQ's final decision if you present either oral or written comments during the comment period. Otherwise, if you wish to receive notification, please call or write DEQ at the above address.

ACCESSIBILITY INFORMATION: This publication is available in alternate format (e.g. large print, Braille) upon request. Please contact DEQ Office of Communications and Outreach at (503) 229-5317 or toll free within Oregon at 1-800-452-4011 to request an alternate format. People with a hearing impairment can receive help by calling DEQ's TTY at (503) 229-6993.



Oregon

Theodore R. Kulongoski, Governor

Ocean and Coastal Management Program

Department of Land Conservation and Development

635 Capitol Street, Suite 150

Salem, Oregon 97301-2540

Phone (503) 373-0050

FAX (503) 378-6033

www.lcd.state.or.us/coastal/html

Public Notice

Oregon Coastal Management Program Consistency Determination

A consistency determination has been filed with the Department of Land Conservation and Development (DLCD), as provided in Section 307(c) of the Coastal Zone Management Act. The consistency determination states that the activities described in the attached federal notice would comply with and be conducted in a manner consistent to the maximum extent practicable with the Oregon Coastal Management Program. The determination and supporting information can be made available for inspection at DLCD's Salem office.

DLCD is hereby beginning its coastal zone review of the proposed federal action and is soliciting public comments on project consistency with the Oregon Coastal Management Program. Written comments may be submitted to DLCD, 635 Capitol St. NE, Suite 201, Salem, OR - attention consistency review specialist. **Any comments must be received by DLCD by the comment date indicated on the attached federal notice.** For further information, you may call DLCD at (503)-373-0050 Ext. 260.

REVIEW CRITERIA

Comments should address consistency with the applicable elements of the Oregon Coastal Management Program. These elements include:

- Acknowledged Local Comprehensive Plans & Implementing Ordinances
- Statewide Planning Goals
- Applicable State Authorities (e.g. Removal-Fill Law and Oregon Water Quality Standards)

INCONSISTENT?

If you believe this project is inconsistent with the Oregon Coastal Management Program, your comments to DLCD should explain why you believe the project is inconsistent and should identify the Oregon Coastal Management Program element(s) in question. You should also describe how the project could be modified, if possible, to make it consistent with the Oregon Coastal Management Program.

DRAFT

DEPARTMENT OF THE ARMY PERMIT

OREGON STATEWIDE PROGRAMMATIC GENERAL PERMIT (SPGP)

PERMIT NO: 200100283

EFFECTIVE DATE:

EXPIRATION DATE: *(two years from the effective date)*

ISSUING OFFICE: U.S. Army Corps of Engineers, Portland District

This programmatic general permit authorizes work in waters of the United States within the state of Oregon for activities that would cause no more than minimal adverse environmental effects, individually and cumulatively, subject to the terms, conditions and limitations contained herein. This general permit is issued upon the recommendation of the Chief of Engineers as provided by 33 CFR 325.5(c)(3), pursuant to Section 404 of the Clean Water Act (P.L. 95-217) and Section 10 of the River and Harbor Act of 1899, as amended.

This programmatic general permit has been developed in a cooperative effort with Oregon Division of State Lands (DSL), which has regulatory authority over waters of the State of Oregon through the Removal-Fill Law (ORS 196.800-196.900). The purpose of this programmatic general permit is to reduce regulatory duplication while enhancing resource protection in the State of Oregon by relying on DSL for the review and evaluation of those proposed activities which meet the eligibility criteria stated in this permit.

ACTIVITIES AUTHORIZED BY THIS GENERAL PERMIT

Types of Activities: This statewide programmatic general permit (SPGP) authorizes eight categories of work in those waters of the United States that are also waters of the State of Oregon. For an activity to be covered (i.e., authorized), it must be listed below and/or covered by the relevant sections of the NOAA-Fisheries Programmatic Biological Opinion(s) that have been incorporated by reference into this general permit: 1) streambank protection; 2) water control structures; 3) utility lines; 4) road construction, repairs and improvements; 5) site preparation for construction or repair of buildings and related features; 6) stream and wetland restoration; 7) minor fills and removals; and 8) piling installation and/or removal. These activities are described in detail on the following pages.

1. Streambank Protection

Covered Activities
<p>All bank protection techniques approved by NOAA-Fisheries in SLOPES II,¹ Section 2.2.3 Terms and Conditions category #4 (streambank protection) are covered. In addition, the activities described #1 and #2 below are covered, but these two activities require the involvement of a professional hydrologist, fluvial geomorphologist or civil engineer, and must have the specific written approval of NOAA-Fisheries for each permit or authorization issued:</p> <ol style="list-style-type: none">1. Rock rip-rap and/or boulders may be used in the toe of the streambank to stabilize the slope long enough for plantings to become established. Rock placed at the toe of the slope must be used in conjunction with woody plantings, herbaceous cover, deformable soil reinforcement, coir logs and/or other bioengineering techniques on the rest of the streambank; and2. Placement of flow direction structures where the length of the streambank treated will not exceed 2.5 bankfull widths (i.e., the 150 foot limit on bank line treatment contained in SLOPES II may be exceeded, up to a maximum of 2.5 bankfull widths).

2. Water Control Structures

Covered Activities
<ul style="list-style-type: none">• Repair of existing water control structures and improvements to those structures as necessary to provide or improve fish passage, consistent with all applicable conditions in SLOPES II, including Section 2.2.3 Terms and Conditions category #6 (water control structures)

3. Utility Lines

Covered Activities
<ul style="list-style-type: none">• Repairs, upgrades, and replacements of existing utility lines, consistent with all applicable conditions in SLOPES II, including Section 2.2.3 Terms and Condition category #8 (utility lines)

4. Road Construction, Repairs And Improvements

Covered
<ul style="list-style-type: none">• Road construction, repairs and improvements consistent will all applicable conditions in SLOPES II, including Section 2.2.3 Terms and Conditions category #7 (road construction, repairs and improvements).

¹ NOAA Fisheries. 2003. Endangered Species Act Section 7 Consultation and Magnuson-Stevens Act Essential Fish Habitat Consultation Programmatic Biological Opinion: Revised Standard Local Operating Procedures for Endangered Species (SLOPES II) for Certain Activities Requiring Department of the Army Permits in Oregon and the North Shore of the Columbia River. NOAA Fisheries Northwest Region (OHB2001-0016 PEC). July 8, 2003.

5. Site Preparation For Construction Or Repair Of Buildings And Related Features

Covered
<ul style="list-style-type: none"> Sites must be inside Urban Growth Boundaries (UGBs) or Unincorporated Urbanizing Centers (UUCs)
<ul style="list-style-type: none"> Planned Unit Developments (PUDs), in which the initial and subsequent development of all platted lots within the development would not exceed ½ acre of fill/removal or 1,000 cubic yards of wetland/waterway fill or removal
<ul style="list-style-type: none"> For projects that include elements of multiple categories of activity under the SPGP, each element must meet the specific conditions of the appropriate category, and the total extent of impacts may not exceed ½ acre or 1,000 yards of wetland/waterway fill or removal
<p>NOTE: - All activities in this category must also be consistent with all applicable conditions in SLOPES II, including Section 2.2.3 Terms and Conditions category #2 (general conditions for surveying, exploration, construction, operation and maintenance).</p> <p>- The Site Preparation category is excluded from areas inundated by tidal waters, but is allowed to occur in adjacent, non-tidally inundated wetlands.</p>

6. Stream and Wetland Restoration

Covered
<ul style="list-style-type: none"> Placement of large wood or rock in streams, including clean, river-run gravel from an in-basin commercial source or upland source for instream habitat restoration (where such materials would have naturally occurred), consistent with all applicable conditions in SLOPES II, including Section 2.2.3 Terms and Conditions category #4 (streambank protection) and with the Washington State ISPG (Appendix I)² or ODF/ODFW, <i>A Guide to Placing Large Wood in Streams</i>.³
<ul style="list-style-type: none"> The following activities are permitted in streams if consistent with all applicable conditions in SLOPES II, including the conditions in Section 2.2.3 Terms and Conditions categories #6 (water control structures) and #7 (road construction, repairs and improvements). <ul style="list-style-type: none"> Restoration of access to habitat by providing fish passage Removal of culverts Placement of culverts, outlet control weirs, bridges and removal or replacement of existing tidegates, but not installation of new tidegates. Reestablishment or rehabilitation of natural or historic functions when self-sustaining, natural processes are used to provide the functions. Actions that require construction of permanent structures, active maintenance, creation or habitat functions where they did not historically exist, or that simply preserve existing functions are not authorized, unless specifically approved in writing by NOAA-Fisheries for each permit or authorization issued.

² Washington Department of Fish and Wildlife, Washington Department of Transportation, and Washington Department of Ecology. 2003. *Integrated Streambank Protection Guidelines*. April 2003.

³ Oregon Department of Forestry and Oregon Department of Fish and Wildlife. 1995. *A Guide to Placing Large Wood in Streams*. May 1995.

- Wetlands may be restored or enhanced by maintaining or restoring hydrologic functions through the partial or complete removal of artificial barriers to water flow, including levees, dikes, berms, weirs, drain tiles or other water control structures. Set back levees, dikes and berms, and reshape streambanks as necessary to reestablish vegetation.

NOTE: Wetland restoration and enhancement must be consistent with all applicable conditions in SLOPES II, including Section 2.2.3 Terms and Conditions category #5 (stream and wetland restoration) and/or NMFS⁴ Section I.B.4., pages 5-6 (restore wetland hydrology) and the eighteen standard conservation measures/BMPs listed on NMFS pages 15-17, as applicable.

7. Minor Fills and Removals

Covered
<ul style="list-style-type: none"> • Excavating material from regularly maintained agricultural ditches in Section 10 waters and depositing that material onto adjacent Section 404/state jurisdictional farmed wetlands or wet pasture. Deposits are limited to a three-inch layer or less and must not convert wetlands to uplands.
<ul style="list-style-type: none"> • Removal of recently deposited fluvial material from existing boat ramps, provided that the activity is conducted in the dry (above the water line), and the material is deposited at an upland disposal site.
<ul style="list-style-type: none"> • Limited repair of the revetment at the toe of an existing boat ramp up, but no more than 10 cubic yards of rock may be used/site/year.
<ul style="list-style-type: none"> • Revegetation of disturbed bank areas with native species
<ul style="list-style-type: none"> • Survey activities including core sampling, seismic exploratory operations, plugging of seismic shot holes and other exploratory-type bore holes, soil survey, sampling, and historic resources surveys.
NOTE: All activities in this category must be consistent with all applicable conditions in SLOPES II, including Section 2.2.3 Terms and Conditions category #2 (general conditions for surveying, exploration, construction, operation and maintenance) and category #10 (other minor discharges and excavations).

8. Piling Installation and/or Removal

Covered
<ul style="list-style-type: none"> • Repairs, upgrades, and replacement of existing pilings, consistent with all applicable conditions in SLOPES II, including Section 2.2.3 Terms and Conditions category #2 (general conditions for surveying, exploration, construction, operation and maintenance).

Limitations on Area and Quantity: All of the activities listed above, except wetland restoration and enhancement, are authorized subject to the following limitations for individual projects:

- a) filling in wetlands shall not exceed one-half (1/2) acre; and
- b) filling and/or excavation in waters other than wetlands shall not exceed 1,000 cubic yards below the ordinary high water line.

⁴ NMFS (National Marine Fisheries Service). 2002. Endangered Species Act Section 7 Consultation and Magnuson-Stevens Act Essential Fish Habitat Consultation Programmatic Biological Opinion on U.S. Fish and Wildlife Service Habitat Restoration Activities. NOAA Fisheries Northwest Region. February 7, 2002. (WSB-01-197)

The thresholds listed in a) and b) above do not apply to wetland restoration and enhancement, but all other conditions and limitations contained in this permit apply to this activity.

ACTIVITIES NOT AUTHORIZED BY THIS GENERAL PERMIT

The following projects will not be eligible for the SPGP:

- a) Any structure or activity that does not require authorization by both DSL and the Corps (i.e., dual jurisdiction) under the State Removal-Fill Law and either Section 10 of the Rivers and Harbors Act and/or Section 404 of the Clean Water Act;
- b) Projects involving excavation at sites where contaminated sediments are known to be present;
- c) Restoration projects, which include the use of basal area credit as described in Oregon Forest Practice Rules (Oregon Administrative Rules 629-640-110);
- d) Activities for which the Environmental Protection Agency has notified the District Engineer and applicant in writing that it is exercising its authority under 404(c) of the Clean Water Act to prohibit, deny, restrict, or withdraw the use or specification of any defined area for the discharge of dredged, excavated or fill material at the proposed site;
- e) Activities for which an application for a fill and removal permit has been denied by DSL;
- f) Projects located within a reach of a river designated as a Federal Wild and Scenic river; and
- g) Activities that were initiated prior to the effective date of this SPGP without a Department of the Army permit, in violation of Federal statute.

PROCEDURES FOR AUTHORIZATION OF INDIVIDUAL ACTIVITIES

The operating procedures for this SPGP are detailed in a separate document, *Standard Operating Procedures for Oregon's Statewide Programmatic General Permit* (SOP) (attached as Exhibit A). The SOP will be the means by which the terms of this SPGP are to be implemented. The SOP document is intended to be flexible and subject to change as needed. Notification of any changes to the SOP will be provided to U.S. Fish and Wildlife Service, National Marine Fisheries Service, U.S. Environmental Protection Agency, Oregon Department of Environmental Quality, Oregon Department of Fish and Wildlife, and Oregon Department of Land Conservation and Development.

COMPLIANCE WITH OTHER FEDERAL STATUTES

See Exhibit A.

CONDITIONS

The following are general conditions. Each project will be reviewed individually by DSL, and additional project-specific conditions may be included by DSL in the Individual Permit, General Authorization or Emergency Authorization. See also note on page 12 of Exhibit A:

Any conflicts between the conditions contained in the proposed SPGP or SOP and those contained in the final NOAA-Fisheries Programmatic BO and MSA Consultation, and the final USFWS Programmatic BO(s) and/or concurrence letter(s), will be reconciled before consultation is concluded with the Services.

Pre-project Vegetation Clearing/Protection

1. Prior to starting the permitted removal and/or fill activities, riparian and/or wetland areas on the project property that are not authorized by this permit to be disturbed shall be clearly flagged or fenced and posted with warnings to equipment operators to keep equipment out of protected areas.
2. Tree removal in jurisdictional riparian and wetland areas shall be strictly limited to permitted impact sites.
3. Within waterways, wetlands or jurisdictional riparian areas, no nesting or perch trees designated by ODFW or USFWS as important for northern spotted owls, marbled murrelets, bald eagles, or other birds that are listed or candidate species under Federal or State Endangered Species Acts may be removed or damaged.

Project Construction

4. The following conditions relating to turbidity shall be observed:
 - a. Except as permitted in General Conditions 5(b) or 5(c), the authorized work shall not cause turbidity of affected waters to exceed natural background turbidity by 10 percent, measured 100 feet downstream from the activity causing turbidity.
 - b. For projects in streams where the gradient is less than or equal to 2 percent (rise/run), monitoring shall take place at no less than 4-hour intervals during active, in-water work. Where erosion control measures specified in General Condition 5 of this permit have been implemented, the turbidity standard specified in General Condition 4(a) may be exceeded for a maximum of 1 (one) monitoring interval per 24-hour work period.
 - c. For projects in streams where the gradient is greater than 2 percent (rise/run), monitoring shall take place at no less than 1-hour intervals during active, in-water work. Where erosion control measures specified in General Condition 5 of this permit have been implemented, the turbidity standard specified in General Condition 4(a) may be exceeded for a maximum of 2 (two) hours.
 - d. For projects impacting streams, water quality monitoring points shall be established at an undisturbed site 100-feet upstream from the point of permitted work to measure background turbidity; at the point of permitted work; and at a point 100-feet downstream from the point of permitted activity. Other monitoring locations may be authorized by DSL if access is problematic. A turbidimeter is recommended for measuring; however, visual gauging is acceptable. If measured visually, turbidity that is visible over background is considered an exceedance of the standard.
 - e. The person(s) doing the monitoring shall be responsible for immediately notifying the permit holder or the permit holder's on-site representative of any exceedance of the turbidity standard and shall keep a record of the exceedance. If a 10 percent exceedance of the background level occurs at 100 feet below the project site, erosion control measures shall be improved or additional erosion controls shall be implemented until the turbidity standard is met and monitoring shall continue at permitted intervals. If exceedances caused by the permitted activity occur during two consecutive measurements, the activity causing the turbidity shall stop until appropriate abatement techniques bring the project back into compliance with the water quality standard.

5. The following erosion control measures (and others as appropriate) shall be observed:
 - a. Filter bags, sediment fences, sediment traps or catch basins, leave strips or berms, or other measures shall be used sufficient to prevent movement of soil from uplands into waterways or wetlands.
 - b. To prevent erosion, use of compost berms, impervious materials or other equally effective methods, shall be used protect soil stockpiles during rain events or when the stockpile site is not moved or reshaped for more than 48 hours.
 - c. Erosion control measures shall be inspected and maintained daily, or more frequently as necessary, to ensure their continued effectiveness and shall remain in place until all exposed soil is stabilized.
 - d. Unless part of the authorized permanent fill, all construction access points through, and staging areas in, riparian or wetland areas shall use removable pads or mats to prevent soil compaction. However, in some wetland areas under dry summer conditions, this requirement may be waved upon approval by DSL.
 - e. Dredged or other excavated material shall be placed on upland areas having stable slopes and shall be prevented from eroding back into waterways or wetlands.
6. The following conditions relating to control of hazardous, toxic and waste materials shall be observed:
 - a. Petroleum products, chemicals, cement/concrete cured less than 24 hours, construction debris, welding slag and grindings, concrete saw cutting by-products, sandblasted materials, chipped paint or other biologically harmful waste materials shall not be allowed to enter waterways or wetlands during the activity authorized by this permit.
 - b. Authorized fill material must be free of these materials.
 - c. Machinery refueling shall not occur in waterways or wetlands or their riparian areas. Any exception must be specifically permitted by DSL and must occur in a confined, designated area and in a manner to prevent spillage into waterways and wetlands.
 - d. Waste materials or construction debris, such as tires, wire, steel posts, asphalt and concrete shall not be placed in waterways or wetlands.
7. If, at any time during the performance of authorized work, the permit holder becomes aware of the presence of a previously unknown federally listed threatened or endangered species or its habitat (either on or adjacent to the project site), the permit holder shall immediately cease activities and notify DSL. The activities shall not continue until approved by DSL.
8. The following conditions relating to work within waterways shall be observed:
 - a. All work within OHW stage, including temporary fills or structures, shall occur within time periods recommended by Oregon Department of Fish and Wildlife (ODFW) for in-water work specified in the most current version of *Oregon Guidelines for Timing of In-Water Work to Protect Fish and Wildlife Resources*. All exceptions to the specified time periods shall require specific approval from DSL after consultation with ODFW.
 - b. If the waterway is inhabited, or was historically inhabited, by native migratory fish as determined by ODFW, USFWS or NMFS, the authorized work shall provide passage for the species/life stages that occur or are likely to occur in that stream, both during and after construction. Culverts and diversion structures or changes to channel morphology, shall meet passage standards specified in Oregon Department of Fish & Wildlife *Guidelines and Criteria for Stream Road Crossings* (October 23, 1997—or its replacement).

- c. During in-water channel disturbance or operation of equipment, if native salmonids and/or federally listed threatened or endangered fish species (including adults, juveniles and incubating eggs) may be present, the permit holder shall ensure that the work area is well isolated from the actively flowing stream. Work shall occur behind cofferdams made from sandbags, sheet piling, inflatable bags, waterwalls or other temporary structures to avoid sediment entrainment and transport off-site. Any exceptions must be specifically approved by DSL.
 - d. Prior to conducting in-stream work, including work area isolation and or pumping operations, the work area or the isolated body of water shall be seined by, or under the supervision of, a fishery biologist with necessary knowledge, skills and abilities to enable proper handling and re-location of any entrapped salmonids and/or federally listed threatened or endangered fish species. The seined fish shall be placed into adjoining water in a manner that avoids injury to the fish.
 - e. Any pumping systems employed to keep isolated work areas dry shall be fitted with screens compliant with National Marine Fisheries Service *Juvenile Fish Screen Criteria For Pump Intakes* (May 16, 1986—or its replacement.) Water discharged into waters of the state shall meet state water quality standards and shall not be discharged into potential fish spawning areas or areas of submerged vegetation.
 - f. All project activities in isolated work areas shall cease under any high flow condition that threatens to inundate the work area. DSL shall be contacted for specific exceptions to this condition that are necessary to minimize erosion or other damage from high flows.
9. If any previously unknown historic or archeological remains are discovered while accomplishing an activity authorized by this permit, the permit holder must immediately cease work at the site of the discovery and notify DSL and Portland District, U.S. Army Corps of Engineers and report what was found. Work under this permit may not continue until authorization to proceed is received from DSL.
10. Rock, woody materials and other natural materials used for project construction must be obtained from a source outside the riparian area, unless otherwise authorized by DSL.
11. No construction or restoration materials may be stockpiled in wetlands, unless the wetlands are authorized for filling as part of the permitted project.

Post-Project Site Restoration

12. All temporary fills authorized under this permit shall be entirely removed and the affected areas returned to pre-project elevations and stabilized with vegetation.
13. Areas of exposed soil disturbed by construction activities adjacent to waterways and wetlands, including construction access roads and staging areas, shall be stabilized by mulching and native vegetative plantings/seeding. Sterile grass may be used instead of native vegetation for temporary sediment control. If soils are to remain exposed more than 7 days after completion of the permitted work, they shall be covered with erosion control blankets or mats until vegetative stabilization is installed.
14. On cut slopes steeper than 1H:2V, a tackified seed mulch shall be used so the seed does not wash away before germination and rooting.

15. Trees and shrubs shall be planted at the area of impact to replace riparian vegetation removed or damaged by the permitted project and/or to stabilize exposed soils. Vegetation used shall be native to the vicinity or region of the state where the project is located and shall be a diverse assemblage of woody and herbaceous species. Plantings shall be arranged randomly to restore pre-existing densities within the re-vegetation area, unless there is a specific planting plan approved by DSL as a part of the permitted project. The planted trees and shrubs shall be temporarily protected until the vegetation is established.

16. Emergent wetland areas that are damaged by authorized temporary fills, equipment access or other project related activities, shall be restored by planting native, emergent wetland plant species, unless DSL authorizes natural re-colonization.

17. Site restoration plantings shall achieve a 75 percent aerial coverage after 5 years, unless otherwise authorized by DSL. If this success standard has not been achieved after 5 years, the applicant shall submit an alternative plan to DSL.

18. In-stream wood (> four-inch diameter) that must be removed or relocated to accomplish the permitted project, shall be replaced at its pre-existing location (preferably), or at an alternate in-stream location within the project area. When replacing temporarily stockpiled native riparian or wetland soils, the richer organic soil shall be placed on top with the more sterile, less organic soil beneath.

CORPS OF ENGINEERS DISCRETIONARY AUTHORITY

The Corps, at its discretion, may require an individual permit for any project proposed for authorization under this SPGP. DSL, at its discretion, may request that the Corps require an individual permit for any project that would otherwise be eligible for authorization under the SPGP.

FEDERAL AGENCY REFERRAL PROVISION

See Exhibit A.

LIMITS OF THIS AUTHORIZATION

- a. This general permit does not obviate the need to obtain other Federal, state, or local authorizations required by law.
- b. This general permit does not grant any property rights or exclusive privileges.
- c. This general permit does not authorize any injury to the property or rights of others.
- d. This general permit does not authorize interference with any existing or proposed Federal project.

LIMITS OF FEDERAL LIABILITY

In issuing this permit, the Federal Government does not assume any liability for the following:

- a. Damages to the permitted project or uses thereof as a result of other permitted or unpermitted activities or from natural causes.
- b. Damages to the permitted project or uses thereof as a result of current or future activities undertaken by or on behalf of the United States in the public interest.

- c. Damages to persons, property, or to other permitted or unpermitted activities or structures caused by the activity authorized by this permit.
- d. Design or construction deficiencies associated with the permitted work.
- e. Damage claims associated with any future modification, suspension, or revocation of this permit.

PERIODIC REVIEW

See Exhibit A.

REEVALUATION OF PERMIT DECISION

The District Engineer may reevaluate this SPGP at any time, and, if appropriate, suspend, modify, or revoke this permit as provided in 33 CFR 325.7. The District Engineer may also suspend, modify, or revoke SPGP authorization for any specific geographic area, class of activities, or class of waters within the State of Oregon.

The District Engineer will evaluate any proposed changes in the Removal-Fill program, including changes in statute, rules, policies and procedures, to determine whether such changes may alter the effectiveness of this SPGP. The District Engineer will advise DSL of the effects of proposed changes on the continued use of the SPGP. If any such changes are implemented by DSL, and as a result of these changes the District Engineer determines that changes to the SPGP are needed, the District Engineer will proceed to modify the SPGP as appropriate, with public notice and opportunity for public comment.

The Standard Operating Procedures for this SPGP are detailed in a separate document, which is intended to be flexible and subject to change. The SOP document can be revised as needed to improve and refine specific processes and procedures without the need for public notice and review.

EXPIRATION OF THIS AUTHORITY

This SPGP will expire two years from the date on which it becomes effective, unless it is extended prior to that date. The expiration date of this permit may be extended up to five years from the initial effective date.

BY AUTHORITY OF THE SECRETARY OF THE ARMY:

Richard.W.Hobernicht
Colonel, Corps of Engineers
District Engineer

(DATE)

**Standard Operating Procedures (SOP)
for
Oregon's Statewide Programmatic General Permit (SPGP)**

September 12, 2003

Introduction

This document details the standard operating procedures (SOP) for the proposed Oregon Statewide Programmatic General Permit (SPGP), and describes how projects eligible for authorization under the SPGP will be processed.

The Oregon Division of State Lands (DSL) and the U.S. Army Corps of Engineers (Corps) shall ensure that notification of any proposed changes to the SOP will be provided to Oregon Department of Environmental Quality (DEQ), Oregon Department of Fish and Wildlife (ODFW), Oregon Department of Land Conservation and Development (DLCD), U.S. Fish and Wildlife Service (USFWS) & NOAA-Fisheries (NMFS) (collectively called *the Services*), and U.S. Environmental Protection Agency (EPA). These agencies will have 30 days to review and comment on the proposed changes. Agencies with regulatory responsibilities derived from federal laws may determine whether proposed changes to the SOP are significant enough to warrant formal review for compliance with applicable federal laws and programs.

Screening of Applications

All applications will be submitted to DSL using application materials supplied by DSL. DSL will determine SPGP eligibility no later than 45 days from the date an application is received. If the project is not jurisdictional or eligible for processing under the SPGP, DSL will notify the applicant by letter, and send a copy of this letter along with the application to the Corps, DLCD, and DEQ. The Corps and DSL will then process the application each according to their own regulations.

If the project is jurisdictional and eligible for processing under the SPGP, DSL will proceed with its application evaluation process following the policies and procedures in the applicable OARs. If the project qualifies for the SPGP, then the applicant may not opt out of the SPGP program.

Types of Authorizations

Individual Permits (IPs)

For IPs, DSL will follow its administrative rules for Individual Removal-Fill Permits, including, but not limited to the following sections of the Oregon Administrative Rules (OAR): OAR 141-085-0025, 0027, 0028, 0029 and 0031.

General Authorizations (GAs)

If the project is eligible for a GA, DSL will process the application according to the provisions set forth in ORS 196.850 and the applicable OARs. Examples of activities that may be eligible for a GA include, but are not limited to, fish habitat enhancement, streambank stabilization, transportation-related structures, wetland restoration and enhancement, tidal channel maintenance and/or piling placement or removal.

Emergency Authorizations (EAs)

In the event of an emergency, as defined in OAR 141-085-0010(58), DSL may issue an emergency authorization under the SGP pursuant to OAR 141-085-0066.

Public Notice and Review

Individual Permits (IPs)

To obtain an IP from DSL, a complete application is required in order for DSL to process the application and issue the permit (OAR 141-085-0025(2)). Upon receipt of an IP application, DSL shall determine within forty (40) calendar days from the date DSL receives the application whether the application is complete (OAR 141-085-0027(2)). DSL shall make a permit decision within ninety (90) calendar days after determining that the application is complete and the fee has been received (OAR 141-085-0028(1)).

Once the application has been deemed complete in accordance with OAR 141-085-0027, DSL shall provide notification of the availability of the application for review to following groups and individuals (OAR 141-085-0028(6)):

- (a) Adjacent property owners;*
- (b) Watershed Councils and public interest groups who have indicated a desire to receive such notices;*
- (c) Affected local government land use planning and zoning departments;*
- (d) Local and State agencies, including but not limited to: irrigation, diking and drainage districts, Soil and Water Conservation Districts, Oregon Department of Fish and Wildlife, Oregon Department of Environmental Quality, Oregon Department of Land Conservation and Development, Oregon Department of Agriculture, Oregon Water Resources Department, Oregon Department of Economic Development, Oregon State Parks and Recreation Department, Oregon State Historic Preservation Office, Oregon Natural Heritage Program and the Oregon Department of Geology and Mineral Industries;*
- (e) Federal agencies, including but not limited to: U.S. Army Corps of Engineers (Portland District), Environmental Protection Agency, U.S. Fish and Wildlife Service, National Marine Fisheries Service, NOAA-Fisheries, any affected unit of the U.S. Forest Service or Bureau of Land Management; and*
- (f) Affected Tribal governments.*

All recommendations and comments regarding the application shall be submitted in writing to DSL within forty-five (45) calendar days from the date of the notice. However, consistent with ORS 196.825(9)(b), the Department of Environmental Quality (DEQ) shall comment within seventy-five (75) calendar days from the date of the notice, unless granted an extension by DSL.

DSL's complete public notice and review process for IPs is detailed in OAR 141-085-0028 (1) to (13).

General Authorizations (GAs)

A comment period of up to 15 days applies to all SGP-eligible GAs. The standard decision-making process for SGP-eligible GAs is excerpted below (Note: The *Agency* in the text refers to DSL):

(X) Following the comment period and not more than forty (40) calendar days from the receipt of an application, the Agency will determine if the project meets the eligibility and mandatory requirements set out in this general authorization and do one of the following:

- (a) Approve the application and issue a letter of authorization to the applicant;*
- (b) Approve the application and issue a letter of authorization, with project specific conditions, to the applicant; or*
- (c) Deny the application and notify the applicant.*

If the Agency determines that the proposed project is ineligible or otherwise does not qualify for the general authorization the applicant may submit the project for processing and review as an application for an individual removal-fill permit, as provided in OAR 141-085.

Emergency Authorizations (EAs)

The application and review requirements described in OAR 141-085-0025, 0027, and 0028 and in the GA rules do not apply to emergency authorizations. Any person requesting an EA may apply orally or in writing. Any request submitted orally must be documented, in writing, by DSL and provided to the applicant. If an EA is issued orally, the written form of the EA shall be sent to the applicant within five (5) calendar days confirming the issuance and setting forth the conditions of operation. The term of the EA shall be specifically stated in the authorization and shall be limited to the time necessary to complete the planned removal-fill activity. A permit holder may request issuance of a new emergency authorization for the same activity upon expiration of the original emergency authorization.

Measures for Identifying Projects in Estuaries for the Purposes of Determining SGP Eligibility

With the exception of Site Preparation, all SGP authorized categories of activities are allowed to occur within tidal areas. The Site Preparation category will be excluded from areas inundated by tidal waters, but will be allowed to occur in adjacent, non-tidally inundated wetlands.

The basis for determining tidal areas will be the publication prepared by DSL entitled, *Heads of Tide for Coastal Streams in Oregon* (March 1989). The observed head of tide as mapped in DSL's document will be used as the default, unless more accurate, credible site specific data exists that contradicts the mapped information. The head of tide for the Columbia River is agreed to be consistent with the DLCD coastal zone boundary (located at the Columbia/Clatsop County border).

As a practical matter, regulatory staff will use readily apparent field indicators, such as drift lines, to determine boundaries in estuaries when adjacent wetlands/marshes are not present. Land surveys and/or further research, such as consulting historic aerial photographs, may be required if the bank has been extensively altered or destroyed through illegal activities.

Substantive Review Standards; Compatibility with the Local Comprehensive Plan and Ordinances

Substantive review standards for IPs are found at OAR 141-085-0029. Each of the seven SGP-eligible GAs has its own set of *Mandatory Requirements and Conditions of Issuance*. In addition, the GA for Wetland Restoration and Enhancement has a set of project guidelines. Each GA contains its own internally consistent review standards.

DSL will also include in its permits and authorizations any applicable terms and conditions and requirements specified by the programmatic federal Endangered Species Act (ESA) and Magnuson-Stevens Fishery Conservation and Management Act (MSA) consultations, and any conditions resulting from Federal Fish and Wildlife Coordination Act (FWCA) review. DSL may issue an individual removal-fill permit requiring the applicant to obtain local land use approval (e.g., conditional use permit) prior to beginning the authorized activity, provided that the activity is consistent and compatible with the local land use plan and ordinance. Applications for EAs shall be reviewed pursuant to the standards in the applicable rules in effect at the time of the request (OAR 141-085-0066(3)).

Requirements for Compensatory Mitigation for impacts to waters of the state other than freshwater wetlands or estuarine areas (OAR 141-085-0115) and requirements for Freshwater Compensatory Wetland Mitigation (CWM) (OAR 141-085-0121 to 0176) may be applied to any authorization. As with project proposals, mitigation proposals must be consistent with applicable comprehensive land use plans and implementing ordinances (141-085-0256(1)).

Screening Protocol for Determining Compliance with Federal and State Endangered Species Act (ESA), Federal Magnuson-Stevens Fishery Conservation and Management Act (MSA), and Federal Fish and Wildlife Coordination Act (FWCA)

All applications submitted to DSL will be screened for presence/absence of federally and state listed species, and other sensitive but non-listed species tracked in the database maintained by the Oregon Natural Heritage Information Center (ORNHIC), Oregon State University. At least during the first year of operation of the SGP, DSL is contracting with ORNHIC to perform this function.

A. Screening Protocol for Sensitive Species and SACs

In consultation with the Services, DSL, ODFW and the Corps, ORNHIC will develop a screening protocol to identify presence/absence of federal and state-listed species, and non-listed sensitive species and to determine the likelihood of direct, indirect, and interrelated/interdependent adverse affects of the proposed action on listed species. SACs are defined in *Standard Operating Procedures (SOPs) for the Identification of Special Areas of Concern as part of the SGP Review*, revised June 18, 2003.

B. SAC "Kick-Out" Provisions

Projects that would result in fill or removal of material in/from a SAC, or that would otherwise indirectly alter or adversely affect a SAC will not be eligible for authorization under the SGP. Such projects will be referred to the Corps for dual Corps/DSL permitting. Specific criteria will be developed by ORNHIC for identifying when an adjacent SAC may be either directly or indirectly affected.

A special stormwater condition will also apply to SACs. Stormwater may be released into a SAC identified by ORNHIC only if it represents the environmentally preferable alternative and is for habitat enhancement purposes. Projects proposing to discharge stormwater into SACs for any other purpose will be ineligible for consideration under the SGP.

Federal Resource Agency Referral Provision

During the SGP notice and review period, federal agencies (USFWS, NOAA – Fisheries, and EPA) may refer (i.e. kick-out) an action proposed for authorization under the SGP to the Corps for review under its regulatory program.

As soon as a Federal agency makes the decision to invoke the referral provision, it should contact DSL (with a copy to the Corps) via e-mail (preferred) or facsimile. For SGP eligible actions being reviewed by DSL as an IP, this notification shall occur no later than 30 calendar days from the date of the DSL notice. For GA's, the maximum response time shall be 15 calendar days from receipt of the notice. For both IP's and GA's, the federal agency must follow-up by sending a

signed, original justification letter to the Corps within 14 days of making the referral request. The justification letter will state the concern, identify the resource or species which would potentially be adversely affected by the proposed action, and describe the adverse effects which the agency believes would be more than minimal, either individually or cumulatively.

If during the first year of operation under the SPGP, the federal agencies desire more time to prepare the justification letter, the agencies may request up to a 15 calendar day extension from the Corps to submit the follow-up justification letter. The initial e-mail or facsimile notification to DSL must still be sent within the time frames outlined above (30-days/IP & 15-days/GA).

In order to avoid unnecessary delays for applicants under either the state or federal permitting process, DSL shall immediately "kick-out" the application to the Corps as soon as it receives the initial federal agency request via e-mail or facsimile. DSL will not hold the application in limbo status waiting for the justification letter. This is intended to limit the delay in referring the application to the Corps to 30 calendar days for an IP and 15 calendar days for a GA.

Oregon Ocean-Coastal Management Program (OCMP) Compliance

This SOP shall be amended through incorporation by reference of the terms and conditions contained in the final SPGP Coastal Zone Management Certification issued by DLCD.

Clean Water Act Section 401 Compliance

This SOP shall be amended through incorporation by reference of the terms and conditions contained in the final SPGP Section 401 Water Quality Certification issued by DEQ.

Wild and Scenic Rivers Act

Projects located within a reach of a river designated as a Federal Wild and Scenic River will not be eligible for the SPGP.

Cultural Resources Act

No activity which may affect historic properties listed, or eligible for listing, in the National Register of Historic Places is authorized by the SPGP until the District Engineer has complied with the provisions of 33 CFR 325, Appendix C.

The prospective permittee must notify DSL and the District Engineer if the authorized activity may affect any historic properties listed, determined to be eligible, or which the prospective permittee has reason to believe may be eligible for listing, and the prospective permittee shall not begin the activity until notified by the District Engineer that the requirements of the National Historic Preservation Act have been satisfied and that the activity is authorized.

A copy of each notice for projects proposed to be authorized by this SPGP will be provided to the State Historic Preservation Office (SHPO) and to the Corps by DSL. Copies of the notice will also be sent to Indian Tribes who have an interest in the area in which the proposed action would occur.

If information is received from the SHPO, tribes or other interested parties which indicates that the site of the proposed action may affect human burials, cultural resources or historic properties (as identified by the Federal historic preservation laws), the Corps will be notified by DSL and will take actions needed to comply with Federal cultural resources and historic preservation laws and regulations.

If any previously unknown historic or archeological remains are discovered while accomplishing an activity authorized by this SPGP, the permittee must immediately notify DSL and the Corps and submit a report documenting the discovery. The Corps will initiate the federal and state coordination required to determine if the remains warrant a recovery effort or if the site is eligible for listing in the National Register of historic Places.

Authorization by SPGP

Authorization of a proposed action by this SPGP will occur when DSL issues an IP, GA or Emergency Authorization. DSL authorization for SPGP actions must include a statement that its action constitutes authorization under Federal laws, subject to the conditions of the SPGP. Such statement and conditions shall be attached to the DSL permit or authorization.

SPGP Monitoring and Reporting

DSL will host a meeting with the involved state and federal agencies to evaluate its performance under the SGP after the first full year's operation under the SGP. DSL will prepare a monitoring/effectiveness report and hold annual meetings with the agencies each year the SGP is in operation. In these meetings, DSL will present statistics relating to SGP authorizations issued by category of activity, and the results of its compliance monitoring and enforcement programs. DSL will request feedback from the state and federal agencies on its adherence to the terms and conditions of the SGP, and all of the associated ESA, MSA, FWCA, OCMP and Section 401 water quality conditions, and will solicit input on needed improvements to the SGP. DSL will return to the agencies with a proposed list of improvements and a schedule for implementation.

In addition, DSL will provide the Corps with quarterly reports of permit processing data under the SGP, including:

1. Types and numbers of activities authorized;
2. Fills and removals permitted;
3. Mitigation required and completed;
4. Compliance monitoring results; and
5. Enforcement actions taken.

To facilitate Oregon Coastal Zone Management consistency review, DSL will disaggregate this data for projects in Oregon's coastal zone.

Permit Compliance, Monitoring and Enforcement

The Corps will conduct compliance monitoring checks for 150 SGP-authorized projects per calendar year. Additional compliance monitoring checks, if required, will be conducted by DSL.¹ SGP monitoring procedures will follow the DSL document entitled,

¹ For calculating the number and type of projects to monitor for compliance, DSL and the Corps will use the representative statistical sampling protocol included as *Appendix 19* in the *SPGP Programmatic Biological Assessment (SPGP BA)*, December 16, 2002 (hereby incorporated by reference into this SOP). The statistical formulas initially show that a sample size of approximately 150 SGP projects/year is required to provide 95% confidence that the compliance rate calculated will be within +/- 5% of the true compliance rate for the population. This approach to sampling will allow DSL to accurately identify compliance problems, such as the high failure/poor compliance rate for compensatory wetland mitigation documented in the SGP BA.

Compliance Manual for the Oregon Removal-Fill Law. The manual details how DSL staff process complaints and violation investigations. *Appendix O* of the manual contains DSL's standardized *Monitoring Form* and *Success Criteria List for Compliance and Compensatory Wetland Mitigation*. DSL/Corps will use the same monitoring and success criteria and forms, and will revise the standard forms to include the final SGP conditions in the list of success criteria. DSL/Corps will also conduct joint staff training so that SGP monitoring personnel will obtain and process data correctly, accurately and consistently.

The Corps will provide compliance-monitoring data to DSL to compile. DSL and the Corps will determine whether follow-up compliance action is required, and by which agency. Each site will be inspected to assess: (1) whether the removal-fill project was or is being constructed in accordance with the authorized design and permit conditions; and (2) whether the success criteria specified in the permit conditions have been or are being achieved (including compensatory mitigation).

The Corps and DSL will periodically hold meetings with EPA and the Services to review compliance monitoring for permitted activities.

Acceptability of "In-Lieu-Fee" Mitigation; Limitations

For projects requiring Compensatory Wetland Mitigation (CWM), in-lieu-fee mitigation may be accepted only for projects meeting the federal requirements set forth in *Federal Guidance on the Use of In-Lieu-Fee Arrangements for Compensatory Mitigation Under Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act*, **Federal Register**/Vol. 65, No. 216/Tuesday, November 7, 2000.

Review of Wetland Delineations/Determinations

DSL will determine the adequacy of all wetland delineations and/or determinations submitted by applicants for SGP-eligible projects.

Changes in the State Removal-Fill Program

DSL will notify the Corps in advance of any proposed statutory or rule changes in the Removal-Fill program which may affect the operation of the SGP. The Corps will advise DSL of the effects of the proposed changes on the continued use of the SGP. If proposed changes are implemented by DSL, the Corps will determine whether it is necessary to modify, suspend or revoke the SGP. The process to modify the

SPGP may include public notice and opportunity for public and agency comments. Modification of the SGP may require reinitiating ESA consultation, and/or reviews or modifications of Section 401 certification and CZM consistency concurrence.

Federal ESA Consultation Procedures

By letter dated October 15, 1999, the Corps confirmed that DSL is its non-Federal representative for consulting with the Services under Section 7 of the federal Endangered Species Act (ESA). Notwithstanding this designation, the ultimate responsibility for Section 7 obligations will remain with the Corps as the action agency.

The Corps and DSL are currently consulting with the Services on the SGP. The agreement that DSL/Corps have reached with the USFWS under Section 7 of the ESA, is to proceed with an informal consultation on all USFWS-listed species except the bull trout and Oregon chub. This agreement is based on the use of the ESA screening protocol described earlier in this document and the avoidance of impacts to all USFWS listed species except bull trout and Oregon chub. USFWS/Corps/DSL will reevaluate this strategy and other pertinent agency concerns that may arise about the SGP program after one year of operation (see **SPGP Monitoring and Reporting**, above). The Corps intends to initiate and conclude formal consultation with the USFWS on the bull trout and Oregon chub prior to the issuance of the SGP.

At this writing NOAA-Fisheries has advised Corps/DSL of its preliminary findings on the effects of the proposed action. NOAA-Fisheries recently completed Biological Opinions that address many of the same categories and similar types of work as the SGP, including SLOPES (Standard Local Operating Procedures for Endangered Species, July 14, 2002), SLOPES II (Revised Standard Local Operating Procedures for Endangered Species, July 8, 2003), and the Corps Regional General Permit for Stream Restoration (RGP) (Permit No. 2000-001). SLOPES II and the RGP apply to essentially the same action area and cover many of the same categories of activities. This has led NOAA-Fisheries to the preliminary conclusion that the terms and conditions of the associated incidental take statements identified in SLOPES II and the RGP represent the probable extent of permissible activities under a programmatic approach, but at this writing consultation has not been concluded.

Any conflicts between the conditions contained in the proposed SPGP or SOP and those contained in the final NOAA-Fisheries Programmatic BO and MSA Consultation, and the final USFWS Programmatic BO(s) and/or concurrence letter(s), will be reconciled before consultation is concluded with the Services.

Oregon Division of State Lands

U.S. Army Corps of Engineers,
Portland District

Director

Colonel, Corps of Engineers
District Engineer

Date: _____

Date: _____